

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
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TWIN CITY FIRE INSURANCE :
COMPANY, an Indiana corporation, and :
HARTFORD CASUALTY INSURANCE :
COMPANY, an Indiana corporation, :
Plaintiffs, :

CIV. 07-4041

COMPLAINT

vs. :

COLLEGE AMERICA SERVICES, INC., a :
Nevada corporation. :
Defendants. :

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The Plaintiffs, Twin City Fire Insurance Company and Hartford Casualty Insurance Company, for their Complaint for Declaratory Judgment against the Defendants, state:

1. Plaintiff Twin City Fire Insurance Company is an insurance corporation incorporated in Indiana and having its principal place of business in Hartford, Connecticut.
2. Plaintiff Hartford Casualty Insurance Company is an insurance corporation incorporated in Indiana and having its principal place of business in Hartford, Connecticut.
3. Defendant CollegeAmerica Services, Inc. is a Nevada Corporation with its principal place of business in Crystal Bay, Nevada.

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4. The amount in controversy herein, exclusive of interest and costs, exceeds \$75,000.00.

5. This Court has jurisdiction over this Complaint for Declaratory Judgment pursuant to 28 U.S.C. § 1332 and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* Venue is appropriate pursuant to 28 U.S.C. § 1391.

6. At all times material, Twin City insured CollegeAmerica under a commercial general liability policy, number 34UUNRC9627. A copy of the relevant portions of the commercial general liability policy is attached as Exhibit A. The first policy was issued on June 2, 2001, for a one year term. Additional one year policies were issued in 2002, 2003, 2004, 2005, and 2006.

7. At all times material, Hartford insured CollegeAmerica under a commercial umbrella liability policy, number 34XHURA0728. A copy of the relevant portions of the commercial umbrella liability policy is attached hereto as Exhibit B. The first policy was issued on June 2, 2001, for a one year term. Additional one year policies were issued in 2002, 2003, 2004, 2005, and 2006.

8. On July 14, 2003, Craft & Associates, Inc., filed suit against CollegeAmerica in Small Claims Court, Minnehaha County, South Dakota. A motion was made to remove the action to this Court on October 30, 2003. Craft & Associates filed its Second Verified Amended Complaint on May 17, 2005. A copy of the Second Verified Amended Complaint is attached hereto as Exhibit C.

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9. Twin City is defending CollegeAmerica under various Reservation of Rights. The underlying action has proceeded through the discovery stage and Plaintiffs now seek a declaratory judgment from this Court issued to CollegeAmerica that the policies of insurance provide no indemnity coverage to CollegeAmerica for the allegations within the Second Verified Amended Complaint.

10. The insurance policies issued by Twin City insure CollegeAmerica against “advertising injury” claims. “Advertising injury” includes infringement of copyright in your “advertisement.” Craft & Associates’s complaint against CollegeAmericia alleges copyright infringement.

11. The Twin City insurance policies, however, exclude coverage for “advertising injury” arising out of a breach of contract.

12. The Twin City insurance policies also exclude coverage for “advertising injury” arising out of oral, written, or electronic publication of material whose first publication took place before the beginning of the policy period.

13. The Twin City insurance policies exclude “advertising injury” caused by an offense committed by, at the direction, or with the consent of the insured with the expectation of inflicting “advertising injury.”

14. The Hartford umbrella policy does not provide coverage for advertising injury unless the underlying policy, issued by Twin City, is applicable to an advertising injury claim.

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15. Craft & Associates alleges that it had an oral agreement with CollegeAmerica for the production of marketing materials to be used by CollegeAmerica.

16. Craft & Associates also alleges that it had a written agreement with CollegeAmerica regarding ownership of various advertising materials.

17. Craft & Associates alleges that CollegeAmerica breached the oral agreement and the written agreement by failing to pay for advertising material produced for CollegeAmerica.

18. Craft & Associates alleges that there is a dispute as to ownership of various advertising materials that have been and are being used by CollegeAmerica.

19. As a result of the alleged contract breaches, Craft & Associates alleges that CollegeAmerica has infringed upon Craft & Associates's copyrighted materials.

20. Craft & Associates also alleges and discovery has shown that after the first infringing publication by CollegeAmerica, CollegeAmerica continued to publish the copyrighted materials resulting in continued copyright infringement.

WHEREFORE, Plaintiffs pray that the Court enter a declaratory judgment:

1. That neither insurance policy (Exhibits A & B) provide any indemnity coverage for CollegeAmerica for the allegations contained in the Second Verified Amended Complaint (Exhibit C).

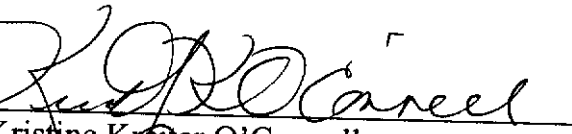
2. That the damages sought by Craft & Associates do not trigger Plaintiffs' indemnification duty.

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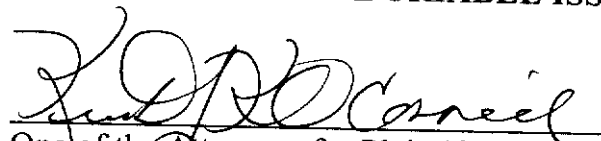
3. Plaintiffs pray for such other and further relief as may be appropriate.

Dated this 19th day of March, 2007.

WOODS, FULLER, SHULTZ & SMITH P.C.

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PLAINTIFFS HEREBY REQUEST A JURY TRIAL ON ALL TRIABLE ISSUES.


One of the Attorneys for Plaintiffs